

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 472

INTRODUCER: Senator Baker

SUBJECT: Law Enforcement Personnel/Employment

DATE: February 5, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires a law enforcement officer, correctional officer, or correctional probation officer to have successfully passed a physical examination in order to presumptively claim that his or her tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty.

The bill authorizes an agency that employs law enforcement personnel to establish standards regarding the use of tobacco.

This bill substantially amends the following sections of the Florida Statutes: 943.13 and 943.137.

II. Present Situation:

Section 943.13, F.S., specifies 11 minimum qualifications for any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer; and any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections (DOC), to a county commission, or to the Department of Management Services.

One of the minimum requirements is that officers pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner.

Section 112.18, F.S., relating to special disability provisions for firefighters, law enforcement, and correctional officers specifies that any condition or impairment of health caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the

contrary be shown by competent evidence. In order to qualify for this special disability provision, this section requires firefighters and law enforcement officers to successfully pass a physical examination upon entering into their respective services, and the exam must fail to reveal any evidence of tuberculosis, heart disease, or hypertension.¹

Section 943.137, F.S., authorizes employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set by law. Qualifications of an employing agency that exceed the minimum employment or basic recruit training course established by the Criminal Justice Standards and Training Commission are binding on individuals affected and must be recognized by the commission.

III. Effect of Proposed Changes:

The bill amends s. 943.13, F.S., to conform to the special disability provisions currently provided for in s. 112.18, F.S. The bill states that in order to be eligible for the presumption set forth in s. 112.18, F.S., while employed by an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required upon entering into service and the exam must fail to reveal any evidence of tuberculosis, heart disease, or hypertension. The bill prohibits a law enforcement officer, correctional officer, or correctional probation officer from using a physical examination from a former employing agency for purposes of claiming the disability presumption against the current employing agency.²

In addition, the bill amends s. 943.137, F.S., to authorize employing agencies to establish tobacco-use standards for officers, in addition to their current authority to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set forth by law.³

The bill takes effect on October 1, 2007.

¹ “Although the statute directs that a condition precedent to a firefighter’s or law enforcement officer’s entitlement to the statutory presumption is proof that the firefighter or law enforcement officer successfully passed a pre-employment physical examination revealing no evidence of the later disabling or fatal condition, the plain language of the statute does not require a correctional officer to satisfy this condition precedent.” *State v. Reese*, 911 So.2d 1291 (Fla. 1st DCA 2005).

² According to the Department of Business and Professional Regulation (DBPR), the Division of Alcoholic Beverages and Tobacco (ABT) currently requires all applicants for law enforcement positions to pass a physical examination prior to being hired. In addition, the ABT has proposed, but not yet implemented, a policy regarding tobacco use by law enforcement officers while on duty. The DOC states that since s. 943.13(6), F.S., already requires its officers to pass a physical examination when hired, this section does not have any effect or burden on its officers.

³ The DOC states that subsection (6) of s. 943.13, F.S., authorizes an agency to establish rules relating to tobacco use. Except for restricting where employees may smoke in DOC facilities, the department currently does not regulate the use of tobacco. The department further states that this subsection does not require the implementation of tobacco use restrictions, and that any attempt to regulate tobacco-use would have to be negotiated with the union and could affect the morale of officers who use tobacco.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Department of Financial Services (DFS) has not indicated that the bill will have any impact on the private sector.

C. Government Sector Impact:

According to the DFS, there have been 184 claims filed since January 1, 2006, under the presumption given law enforcement and correctional officers under s. 112.81, F.S. Of the reported claims, 142 are from DOC employees, and 56 are litigated. As of December 31, 2006, these DOC claims have an incurred value of \$3,892,239. The DFS states that correctional officers are the only employment class who are not required to have a pre-employment physical exam to meet the presumption. The total amount of the incurred value of the presumption claims filed during the same period is \$4,512,288.

The DFS further states that the correctional officers' requirement of a pre-employment physical examination should have a positive fiscal impact on the Risk Management Fund and reduce the filing of claims. The amount of this fiscal impact is unknown because these officers are not currently required to have this examination to qualify for the "presumption." Therefore, the DFS is unable to determine how many of the officers would not, as a result of the physical examination, qualify for the "presumption" due to a pre-existing condition.

The DOC states the bill would have no effect on the department since all certified officers must pass a physical examination, and the department currently does not set tobacco-use standards for employees.

The DFS has not indicated that the bill will have an impact on local governments.

The DBPR states that there is no anticipated impact on the ABT from the proposed changes in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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